MONTANA LEGISLATIVE HISTORY

Chapter 60 19 75

Bill H 287 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	2-5	C	Hearing Date(s)	2-27	✓ C
	2-11	✓ C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE BILL NO. 287

INTRODUCED BY [signatures]

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO CONTRIBUTORY NEGLIGENCE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Contributory negligence -- when bars recovery. Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or injury to person or property, if such negligence was not greater than the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributable to the person recovering.

-End-

INTRODUCED BILL

HB 287

1975
house

JUDICIARY COMMITTEE

44th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 287	An act relating to contributory negligence.	1/24/75	Jim Moore	2/5/75	DO PASS	2/11/75
HB 297	An act to amend voter registration laws by removing language discriminating against students in determining residency; amending section 23-3022, R.C.M. 1947.	1/24/75	Lester	2/5/75	DO PASS	2/5/75
HB 298	To amend voter registration laws by allowing a registrar to enter an absent elector's name on official register without the affidavits, etc.	1/24/75	Lester	2/5/75	DO PASS	2/5/75
HB 307	To amend sections 91A-3-803 and 91A-3-805, RCM 1947 relating to claims against a decedent's estate.	1/24/75	Dassinger	2/6/75	DO PASS	2/11/75
HB 309	An act providing procedures for the disqualification of justices, magistrates, & justices of the peace in criminal proceedings.	1/25/75	Scully	2/6/75	DO PASS AS AMENDED	2/7/75
	Amending section 23-3022 to					

Proponent Bill Romine, representing the Montana Motorcycle Dealers Association, left a prepared statement.

Opponent Tom Harrison, representing the Montana Trial Lawyers Association, stated he assumes the bill will be put in a subcommittee and he would work with them if they so desire. He stated the Department of Transportation, in a study, found inequities in this bill. In Montana we have no basis, need for no-fault insurance; we have no clogged courts, none of the traditional problems that led Massachusetts to go to no-fault insurance. He stated the interest of insurance companies in no-fault is self-interest as they will pick up more premiums. There is a problem with weight ratio in charging of responsibility for accident. Also, lack of offsets in the bill. He feels this act is not uniform, no one has used this bill, Michigan based their law on this but made many changes. He stated that in Montana we have the third lowest premium structure in the United States.

Opponent Chadwick H. Smith, representing American Mutual Insurance Alliance, stated there are some advantages in the tort system that should be retained. House Bill 250 practically abolishes the right to sue in tort. There are possible areas of unconstitutionality in property damage section because no redress is allowed. They do support the no-fault system but feel there are too many problems with this proposal.

No further proponents or opponents were present so the hearing was opened to questions from committee members.

Representative Halvorson stated she finds the public very interested in no-fault concept, but they won't buy just anything. She questioned whether there was a rate structure she could explain to the public, to which Mr. McCabe stated there wasn't. They couldn't say how much it would cost.

Representative Yardley questioned if you could collect twice if you had other medical coverage besides the no-fault coverage, to which he was advised the bill is not clear regarding duplication of medical payments. Following several other brief questions, the hearing was closed.

HOUSE BILL NO. 287 Representative James Moore, District #18, chief sponsor, stated this was a good time to take up this bill relating to contributory negligence and the hardship imposed. He stated that in the present system you have a right to be compensated for your injury. The comparative negligence doctrine is based on all or nothing. Juries tend to disregard contributory negligence or will apply it arbitrarily.

Proponent Tom Harrison, representing the Montana Trial Lawyers Association, stated that as a practical matter in gross cases where negligence is minimal juries don't pay any attention to contributory negligence.

Proponent Frank Morrison, a law partner with Representative Moore, stated that he had practiced in Nebraska before coming to Montana. He stated this is an attempt to broaden out compensation for injured people. The push for no-fault is to compensate people injured in accidents. Under the present law you could not recover at all for negligence.

Proponent Chadwick H. Smith, representing the American Mutual Insurance Alliance, stated that it should be included in this bill that the facet of computation should be made by the judge, not the jury. Proponent Boyce Clark, representing the Independent Insurance Agents, stated he guardedly supports this legislation. He stated that with this bill there will still be disputes. Twenty-two states are using this concept.

No further proponents or opponents were present and there were no questions by committee members. The hearing was closed.

HOUSE BILLS NOS. 297 and 298 Representative Dennis Lester, District #37, stated both these are cleanup or housekeeping bills. He stated that the phrasing of line 20 on page 1 in House Bill No. 297 should have been struck a long time ago.

Proponent Mike Pichette, representing himself, stated the language in 23-3002 defines the requirement for residency. A Supreme Court decision struck the one-year limit down, it is now thirty days. Failure to remove this phrase from the law has caused problems in a couple of cases.

Mr. Pichette stated that House Bill No. 298 is intended to simplify the work of the county clerk and recorder. The bill has added the term "deputy registrar" which helps simplify the work of the registrar.

There were no other proponents and no opponents. The hearing was opened to questions from committee members. Representative Lory questioned if you could get into trouble with paying of fees this time to which Representative Scully replied no, it is not going to affect them. There were no further questions, so the hearing was closed.

EXECUTIVE SESSION

HOUSE BILL NO. 297 Representative Lester made a motion of DO PASS. Representative Anderson stated they have been doing this all along and Representative Scully agreed except in some cases. Motion DO PASS carried unanimously.

HOUSE BILL NO. 298 Representative Halvorson made a motion of DO PASS. Motion carried unanimously.

HOUSE BILL NO. 287 Representative Vincent questioned whether a decision on no-fault insurance should be made before deciding this bill. Representative Yardley stated he didn't think there was any conflict as contributory negligence applies in areas that have nothing to do with auto insurance.

Representative Rasmussen made a motion of DO PASS. Representative Day stated that Mr. Smith had indicated he had an amendment to propose but it was not prepared in time.

A substitute motion by Representative Seifert that this bill be held in committee for another day carried.

HOUSE BILL NO. 250 Chairman Huennekens assigned this bill to the subcommittee chaired by Representative Vincent to study the no-fault proposals.

Time having run out the meeting adjourned at 10:35 AM.

HERB HUENNEKENS, CHAIRMAN

NAME James T. Harrison Jr. Bill No. 287

ADDRESS 2225 11th Date

WHOM DO YOU REPRESENT? Mont. Trial Lawyers Assoc.

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

JUDICIARY COMMITTEE

February 11, 1975

EXECUTIVE SESSION

The twenty-seventh meeting of the House Judiciary Committee was called to order in Room 436 of the Capitol Building Tuesday, February 11, 1975, on adjournment of the House at 6:00 PM. Representative Huennekens, Chairman, presided. All members were present.

This meeting was called for purpose of Executive session.

HOUSE BILL NO. 287 Representative Moore reminded the committee that it was requested by the insurance company that the jury should determine the proportion of damage. Representative Moore moved to amend following line 17 by adding a new paragraph: "In cases heard by a jury, the jury shall determine the proportion of negligence, if any, and ask for damage. The judge, explaining the findings of the jury shall redress total damages in property to amount of damage attributable to the person recovering."

Representative Hager questioned this, he thought the insurance company asked to have this the other way around, that the jury will determine the total damage and percentage and the judge applies the percentage. Representative Seifert agreed with this. Representative Moore stated that the other states that have this don't have that in there. Findings of negligence is exclusive to the jury. They are findings of fact.

Representative Huennekens questioned if it wasn't rather usual in damage cases that the jury fix the award to which Representative Moore replied it was. Representative Moore explained this process in length, stated that following the hearing he had talked this requested amendment over with the insurance company representative who had testified.

A substitute motion by Representative Kimble of DO PASS carried with Representative Meloy abstaining.

HOUSE BILL NO. 354 Representative Kimble moved to amend on page 1, line 15, following $12,500, by inserting "said salary to be set by the judge in the district in which the reporter works," as proposed in testimony. Representative Moore explained that he had talked with Judge Nat Allen who stated that in order to have this also approved by the county commissioners his court reporter would have to be approved by seven different sets of county commissioners.

February 11, 19 75

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 287

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO CONTRIBUTORY NEGLIGENCE."

respectfully report as follows: That HOUSE Bill No. 287

DO PASS

HH:pb

STATE PUB. CO.
Helena, Mont.

1975 Senate

44th LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
246	2/5/75	2/27/75	2/28/75				2/27/75		
250	3/4/75	3/14/75	die in committee						
251	3/15/75	3/19/75	3/20/75						3/19/75
257	3/8/75	3/17/75	3/20/75						3/19/75
262	3/4/75	3/11/75	3/21/75					3/20/75	
275	3/17/75	3/19/75	3/20/75					3/19/75	
283	2/7/75	3/7/75	3/13/75				3/11/75		
287	2/17/75	2/27/75	2/28/75				2/27/75		
297	2/10/75	3/7/75	3/13/75				3/11/75		
298	2/10/75	3/7/75	3/25/75						3/25/75
307	2/17/75	3/6/75	3/13/75					3/11/75	
309	2/18/75	3/6/75	3/6/75					3/6/75	
311	2/14/75	3/11/75	3/13/75				3/12/75		
329	2/15/75	3/11/75	3/11/75						3/11/75
345	2/13/75	3/8/75	3/10/75				3/8/75		
354	2/20/75	3/8/75	3/19/75					3/18/75	
364	2/25/75	3/11/75	3/19/75					as amended w/o recomend 3/18/75	

"Bill Summary Sheet for Senate House Bills and Resolutions"

HB 246 -- Representative James Moore, District 18, and sponsor of the bill, stated this bill was drafted at a request from his Clerk of Court and would permit disposing of juvenile records which were 10 or more years old at the effective date of the Youth Act.

HB 287 -- Representative James Moore, District 18, and sponsor of the bill, stated the bill establishes comparative negligence. It would provide a system for considering fault on a comparative basis. Twenty-two states have adopted the measure. By comparing the relative faults of the people involved in the settlement of a suit, a verdict could be reached in the middle cases where faults exists 65% on one side and 35% on the other. Present law denies recovery if there is fault on the part of the person filing suit.

HB 122 -- Tom Honzel, representing the Montana County Attorneys Association, presented the bill at the request of Representative Dan Yardley, District 74, sponsor of the bill. He stated the purpose of the bill is to correct an oversight in recodification relating to contributing to the delinquency of a youth. He stated further that provision is made in the bill for evidence to be submitted in specific cases of contributing to delinquency of a youth.

The public hearing was closed and the Committee met in Executive Session.

HB 46 -- SENATOR DRAKE MOVED HB 46 BE NOT CONCURRED IN. THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATOR ROBERTS VOTING NO.

HB 246 -- SENATOR ROBERTS MOVED HB 246 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 287 -- SENATOR DRAKE MOVED HB 287 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 122 -- SENATOR CETRONE MOVED HB 122 DO NOT BE CONCURRED IN. SENATOR GREELY MADE A SUBSTITUTE MOTION HB 122 BE CONCURRED IN.

After discussion of possible amendments, Senator Greely withdrew his motion and moved a substitute motion to pass consideration for the day. Senator Greely will prepare specific amendments for committee consideration.

There being no further business, the meeting adjourned to reconvene at 9:30 a.m. Friday, February 28.

Chairman

Judiciary COMMITTEE

~~SECOND HALF~~ - ~~43rd~~ 44th LEGISLATIVE SESSION 1975 Date 2/27,

	PRESENT	ABSENT	EXCUSED
Thomas E. Towe	X		
Joe R. Roberts	X		
V. E. Cetrone	X		
Margaret S. Warden	X		
Robert J. Brown		X	
Glen L. Drake	X		
Jean A. Turnage	X		
Michael Greely	X		

SENATE COMMITTEE JUDICIARY

Date Jan 27, 1975 House Bill No. 257 Time

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS	X	
V.E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN		
GLEN L. DRAKE	X	
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

February 27 19 75

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 287

Respectfully report as follows: That HOUSE Bill No. 287

XXXXXX BE CONCURRED IN

Chairman.

STATE PUB. CO.
Helena, Mont.

HOUSE BILL NO. 287

INTRODUCED BY JAMES MOORE, SCULLY, MULAR, STOLTZ

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO CONTRIBUTORY NEGLIGENCE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Contributory negligence -- when bars recovery. Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or injury to person or property, if such negligence was not greater than the negligence of the person against whom recovery is sc , but any damages allowed shall be diminished in the pr rtion to the amount of negligence attributable to the person recovering.

-End-